

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:13-CR-00199-F-2

UNITED STATES OF AMERICA,

)

)

v.

)

O R D E R

DAVID CHRISTOPHER MAYHEW,

)

Defendant.

)

This matter is before the court *sua sponte*. On September 22, 2014, David Christopher Mayhew filed a *pro se* Motion to Appoint New Counsel [DE-88] to remove his fourth attorney, R. Clarke Speaks. The next day, Speaks filed a Motion to Withdraw [DE-89]. The court held a hearing on both motions on September 29, 2014. At the hearing, the court held that both motions were denied and Speaks would serve as standby counsel in Mayhew's case. The court further held that the case would proceed to arraignment and trial at this court's November 3, 2014 term of court.

On October 9, 2014, the Government filed an Uncontested Motion for Hearing to Clarify Record on Defendant's Request for Substitute Counsel and for 30-Day Continuance of Arraignment and Trial [DE-94]. That same day, this court allowed the motion. A hearing was set for November 4, 2014, to further address the Motion to Appoint New Counsel and Motion to Withdraw. It was also ordered that Mayhew's arraignment and trial were continued to this court's December 1, 2014 term of court. On October 16, 2014, Mayhew filed an interlocutory Notice of Appeal [DE-97].

"[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." *Griggs v. Provident Consumer Discount Co.*, 459 U.S.

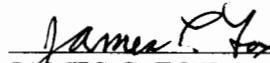
56, 58 (1982). Generally, the filing of a notice of appeal, including an interlocutory appeal, "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Id.*

In this case, this court was without jurisdiction once Mayhew filed his interlocutory Notice of Appeal on October 16, 2014. Therefore, the hearing set for November 4, 2014, and the arraignment and trial set for the December 1, 2014 term of court are to be removed from this court's calendar. This court will set new dates after receiving an order from the Fourth Circuit on Mayhew's appeal. The resulting delay shall be excluded from the speedy trial computation.

See 18 U.S.C. § 3161(h)(1)(C).

SO ORDERED.

This, the 31 day of October, 2014.



JAMES C. FOX
Senior United States District Judge